

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>DEVIN A. PEMBERTON, #67123-018</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 21-cv-1458-DWD</b>
	)	
<b>USP MARION, et al</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER OF DISMISSAL**

**DUGAN, District Judge:**

On January 11, 2022, Plaintiff was ordered to pay the filing fee of \$402.00 on or before January 26, 2022, and he was warned that failure to comply would result in dismissal of the action. (Doc. 11). To date, Plaintiff has failed to pay the filing fee. Therefore, this action is **DISMISSED without prejudice** for failure to comply with an Order of this Court. *See* FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994).

Plaintiff's obligation to pay the \$402.00 filing fee for this action was incurred at the time the action was filed. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Accordingly, the agency having custody of Plaintiff is directed to remit the \$402.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$402.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, the agency shall begin forwarding monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account (including all deposits to the inmate account from any source) until the statutory fee of \$402.00 is paid in its entirety. The agency having custody of Plaintiff shall forward payments

from his account to the Clerk of Court each time his account exceeds \$10.00 until the \$402.00 filing fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois. The Clerk is **DIRECTED** to mail a copy of this Order to the Trust Fund Officer at the Marion United States Penitentiary *upon entry of this Order*.

The Clerk is **DIRECTED** to close this case.

**IT IS SO ORDERED.**

DATED: February 4, 2022

The image shows a handwritten signature in black ink, which appears to read "David W. Dugan". The signature is written over a circular official seal. The seal features an eagle with spread wings, holding an olive branch and arrows, with a shield on its chest. The text "UNITED STATES DISTRICT COURT" is at the top and "SOUTHERN DISTRICT OF ILLINOIS" is at the bottom of the seal.

David W. Dugan  
U.S. District Judge